

1. STIPULATION OF COUNSEL

[Caption omitted]

It is hereby stipulated and agreed by and between counsel for the respective parties hereto, as follows:

1. That some or all of the claims in this action present the same issues of law and fact as are presented by the case of *The Chesapeake and Ohio Ry. Co. v. United States*, in the District Court of the United States for the Eastern District of Virginia, Civil Action No. 1268.

2. That further proceedings in this action shall be stayed until there is a final judgment in No. 1268, *supra*.

3. That the final judgment in No. 1268, *supra*, shall govern the disposition of the claims involved in this action to the extent that it is applicable.

4. It is understood that the final judgment in No. 1268 refers to the judgment after all rights of appeal have been exhausted, if either party should determine to appeal from any judgment of the District Court in No. 1268.

Dated: _____

2 (S.) MEADE T. SPICER, JR.,
Counsel for Plaintiff.

(S.) A. CARTER WHITEHEAD,
United States Attorney.

(S.) RICHARD E. LEWIS,
Ass't. United States Attorney.

2. ORDER ON PRE-TRIAL CONFERENCE

[Caption omitted]

At a pre-trial conference with counsel held at Richmond on December 9, 1954, it was determined and is now ORDERED that:

(1) The motion of the defendant to refer this case to the Interstate Commerce Commission to determine whether the domestic tariff rate involved in this proceeding is reasonable if it should be determined that the shipment involved, or any part thereof, was subsequently exported, is denied.

(2) The question for determination by the Court at the hearing of this case on its merits is whether the ultimate exportation of the shipment, or any part thereof, results in causing the export tariff rate to Newport News applicable in the instant case for transportation of such shipment, or any part thereof, as may have been so exported.

(3) In so far as the related cases now pending will be affected thereby the decision of this case will be controlling.

(S.) STERLING HUTCHESON
United States District Judge.

December 10, 1954.

3. STIPULATION OF FACTS

[Caption omitted]

Now comes The Chesapeake and Ohio Railway Company, plaintiff, by and through its undersigned attorney of record, and the United States of America, defendant, by and through L. S. Parsons, Jr., United States Attorney for the Eastern District of Virginia, and hereby stipulate that the following facts are to be taken as true and correct in

this action, without prejudice to objections to materiality and relevancy; and under the best evidence rule.

1. The plaintiff is a corporation organized and existing under the laws of the State of Virginia and is a common carrier by railroad, operating in interstate commerce, and connects with, and performs through services in conjunction with, other such common carriers by railroad who participated in the through transportation services involved in this case.

2. This is an action under the Tucker Act for the collection of balances of transportation charges on various shipments transported by the plaintiff for the defendant. Included in the Account or Schedule of Charges annexed to the plaintiff's Bill of Complaint, are Line-haul Freight Charges which accrued on fifty carload shipments of Freight Chassis, Seat Cabs and Bodies, consigned and transported on government bills of lading from Pontiac, Michigan to Newport News, Virginia, on various dates in the period from December 10, 1941, through January 31, 1942, under applicable tariffs and classifications in effect, and delivered to the consignee at Newport News, Virginia, and unloaded on a pier controlled by the government.

3. The said shipments were made in good faith by the government, with the intention that the articles therein would be exported from Newport News to the Republic of China, pursuant to the Lend-Lease Act of March 11, 1941, by way of the port of Rangoon, Burma. Except for the fall of Rangoon to the Japanese military forces on March 8, 1942, the shipments would have been exported accordingly.

4. Defendant now offers to present evidence alleged to show the fact set forth in the attached photostat, Exhibit 1.

5. At the time the shipments were consigned and trans-

ported from Pontiac, Michigan, to Newport News, Virginia, there was on file with the Interstate Commerce Commission and in effect, Central Freight Tariff No. 218-M, attached hereto as Exhibit 2 to this Stipulation of Facts.

6. The plaintiff, as delivering carrier at Newport News, Virginia, rendered bills for the line-haul transportation charges from Pontiac, Michigan, to Newport News, and said bills were paid initially by Army disbursing officers in substantially the amounts billed; such charges being computed by the use of the established domestic freight rates published in Central Freight Tariff No. 490-A, on file with the Interstate Commerce Commission and in effect. Upon subsequent audit of the payment vouchers, the General Accounting Office of defendant several years thereafter, recovered back from the plaintiff, the difference between such sums and the lesser sums calculated respectively, by said office, at the existing export freight tariff rates, by making deductions from amounts otherwise due to the plaintiff by the defendant, on other bills for other and different transportation services performed, by virtue of Title 49 U. S. Code, Annotated, Section 66.

7. The question for determination is, whether the published domestic freight tariff rates between Pontiac, Michigan, and Newport News, Virginia, are properly applicable to the shipments involved, or whether the lower export tariff rates are applicable thereto.

8. The title page of said Central Freight Tariff No. 218-M, and pages 81, 331, 333, 334 and 362 thereof are attached hereto as "Exhibit A" to this Stipulation of Facts.

Agreed:

(S.) R. R. RYDER,

Assistant United States Attorney.

Agreed:

(S.) MEADE T. SPICER, JR.,

Counsel for Plaintiff.

Feb. 10, 1955.

4. PLAINTIFF'S MOTION TO REJECT PROOF
OFFERED BY DEFENDANT

[Caption omitted]

Plaintiff moves that the proof offered by defendant, in support of a contention that certain portions of some of the shipments on which charges are sought to be collected herein, were subject to an export rate from Pontiac, Michigan, to Newport News, Virginia, be rejected and excluded by the Court, upon the following grounds:

1. The ultimate alleged exportation of such shipments was not in compliance with the applicable published tariffs in effect, namely, Central Freight Tariff No. 218-M.

2. The defendant voluntarily converted the shipments into domestic shipments before they were ultimately exported.

3. The articles left the possession of the carrier and were transported to other domestic points, and were stored and reboxed by a private contractor at various storage places, prior to being exported.

4. The articles were not exported from Newport News, Virginia, but from Pacific Coast points, to which the tariffs in effect had no application.

5. The articles ultimately exported were not the identical articles as originally consigned from Pontiac, Michigan.

6. Exportation did not take place within any reasonable time after delivery at Newport News, Virginia, under the circumstances.

7. Defendant enjoyed other export rates from the Pacific Coast points to India.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY

5. THE JUDGMENT ORDER
[In District Court]

[Caption omitted]

This day came the parties, by their respective attorneys, and filed a signed Stipulation of Facts. The defendant offered to present proof of the facts contained in Exhibit No. 1 attached to said Stipulation of Facts, and thereupon the plaintiff filed its motion in writing to reject and exclude the said proof offered by the defendant, and also presented oral testimony of witnesses in support of its Bill of Complaint and of its said motion;

Whereupon, the Court having maturely considered the Stipulation of Facts, and the pleadings and evidence, including the Exhibits and the oral testimony presented, and the arguments of counsel, and being of opinion that the plaintiff's motion to reject the proof tendered by the defendant should be sustained, doth sustain said motion and doth reject and exclude such proof:

No further evidence or defenses being presented, and the Court being of opinion that the plaintiff is entitled to recover for transportation charges in the amount set forth in the account attached to its Bill of Complaint, namely, \$9,657.69, subject to an admitted credit of \$86.33, *It Is Therefore Considered by the Court*, that the plaintiff do recover of the defendant, the United States, the sum of Nine Thousand Five Hundred and Seventy-One Dollars and Thirty-Six Cents (\$9,571.36).

(S.) STERLING HUTCHESON
United States District Judge.

Date: 2/10/55.